



Petitioner's petition, filed with the Division of Tax Appeals on August 9, 1993, protests the notice issued by the Division asserting deficiencies in personal income tax (Notice No. L003038767).<sup>1</sup> The petition alleges that petitioner was neither domiciled in New York nor a statutory resident thereof during the years in question. Attached to the petition is a one-page statement which includes allegations of fact as well as arguments of law. The statement of facts does not comply with the regulatory requirement that the petition contain separately numbered paragraphs setting forth a statement of facts upon which the petitioner relies to prove each alleged error of the Commissioner (see, 20 NYCRR 3000.3[b][5]). The statement does, however, set forth such facts in narrative fashion.

The petition alleges that the decedent was born in Italy in 1905 and maintained his Italian citizenship until his death in 1990, all the while keeping "extremely close ties" to Italy, and maintaining a permanent place of abode in Florence, Italy. In addition, the petition asserts that the decedent spent practically all of his final years (1988-1990) (years beyond the scope of the audit) in Italy, as that was his place of domicile, the place to which he always intended to return. The petition contends that the decedent, actively involved in directing the business affairs of the Gucci multinational business, with locations around the world, was constantly traveling between New

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<sup>1</sup>There is no copy of this Notice of Deficiency in the record, but both parties refer to it in the pleadings.

York, Florida, California, the Far East and Europe. Although during the years in question the decedent concededly maintained a "convenience apartment" in New York City, located in close proximity to the decedent's New York office, the petition denies that the decedent ever spent

in the aggregate more than 183 days of any of the taxable years at issue in New York. In addition, the petition claims that the decedent never voted in or obtained a driver's license from New York, and, further, that there was never any indicia to suggest that the decedent was a domiciliary of New York. Based on these facts, the petition alleges that the decedent was not a resident individual of New York during the audit period and that the proposed adjustments in the amount of taxes owed by petitioner, the decedent's estate, are without foundation.

The Division served an answer to the petition, dated October 5, 1993, signed by Craig Gallagher. Mr. Gallagher also served a demand for a bill of particulars, dated October 4, 1993, upon petitioner's representative, Stuart A. Smith. By its demand, the Division requested, among other things: (1) an itemization of the days petitioner was present in New York State and City during the audit period; (2) a list of jurisdictions other than New York where petitioner was physically present, and the percentage of time spent in each jurisdiction during the audit period; (3) a statement identifying the street address, city, county and state of all real property in which petitioner owned an interest, either individually or jointly, during the

audit period; (4) a statement identifying any rental income petitioner may have received from any real property owned during the audit period; (5) a list of all addresses where petitioner received mail during the audit period, as well as an explanation of the dates during which petitioner received mail at those addresses; (6) a list of all addresses where petitioner maintained a residence during the audit period, as well as an explanation of the dates during which petitioner resided at those addresses; (7) a detailed description of all residences maintained by petitioner during the audit period, including total square footage of each dwelling, the number of rooms and the date the residence was acquired; (8) a list identifying the legal name and address of each business and/or investment venture in which petitioner participated during the audit period, the duties of petitioner in relation to each venture, petitioner's title or official position with respect to each venture, and whether the venture was a sole proprietorship, partnership or corporation; (9) a list identifying each charge account (individual or joint) petitioner held with any retail stores, gasoline companies and charge account service companies (e.g., American Express) during the audit period, including the street, city, county and state of the issuer or issuing bank (for the service companies), the date on which each account was opened and closed and the number of each account; (10) a list of those professional associations of which petitioner was a member during the audit period, including the date on which petitioner first joined and the address of each local and/or regional

chapter to which petitioner belonged; (11) a list of each professional license held by petitioner during the audit period; (12) a list of each state and/or country for which petitioner had a motor vehicle driver's license during the audit period, including the date on which the license was first issued and the date of surrender or termination of the license; (13) a list of the license numbers and state of registration of each motor vehicle owned by petitioner during the audit period and the dates of registration of those vehicles; (14) a statement as to whether or not petitioner had a will in effect during the audit period and the name and address of the attorney who prepared it, when it was prepared and the state in which it was executed; (15) a list of each state or country in which petitioner filed an income tax return during the audit period, including which, if any, of these returns were filed as a resident; (16) a statement as to whether or not petitioner held a Visa, green card, passport or other papers or documentation permitting extended visits or stays in the United States; and (17) a statement as to whether or not petitioner ever filed a declaration of intent, and/or applied for or was granted status as a United States citizen.

Petitioner failed to provide a bill of particulars within 30 days as required by the rules of practice of the Tax Appeals Tribunal (20 NYCRR 3000.6[a][2]). On October 29, 1993, the Division granted petitioner an unlimited time extension, subject to ten days notice, to provide the bill of particulars. On March 28, 1994, the Division formally requested that petitioner

provide the Division with a bill of particulars on or before April 7, 1994. On April 6, 1994, petitioner's representative contacted the Division's representative to request a short adjournment regarding the provision of the bill of particulars, asking the Division's representative to delay the filing of the motion to preclude, and delivering assurances to him that the bill of particulars would be provided on or before April 14, 1994. Petitioner failed to provide the bill of particulars within the extension period granted by the Division. The Division waited more than six months from the time the demand was served upon petitioner (on or about October 5, 1993) before filing the motion to preclude (April 15, 1994). At present, more than seven months after the Division issued its demand for a bill of particulars, petitioner still has not responded.

#### OPINION

Section 3000.6(a)(1) of the Tax Appeals Tribunal Rules of Practice and Procedure provides as follows:

"After all pleadings have been served, a party may wish the adverse party to supply further details of the allegations in a pleading to prevent surprise at the hearing and to limit the scope of the proof. For this purpose, a party may serve written notice on the adverse party demanding a bill of particulars within 30 days from the date on which the last pleading was served."

If the party upon whom the demand is served objects to any item, he or she must make a motion to vacate or modify the demand within 20 days after its receipt, and if no motion is made, the bill must be served within 30 days after the demand is made (20 NYCRR 3000.6[a][2]). In the event that a party fails to furnish a bill of particulars, the nonresponsive party may be

precluded from giving evidence at hearing of items of which particulars have been demanded and not delivered (20 NYCRR 3000.6[a][3]).

Petitioner was served with a demand for a bill of particulars on or about October 5, 1993. Petitioner did not respond to the demand, even within the extension period granted by the Division, nor did petitioner answer the Division's motion for an order to preclude.

The function of a bill of particulars is to amplify the pleadings, to limit the proof at hearing and to prevent surprise to the adverse party by enabling him to know definitely the claim against which he will be called to defend (see, Johnson, Drake & Piper v. State of New York, 43 Misc 2d 513, 251 NYS2d 500). As a general rule, a bill of particulars may not be used to obtain the names of witnesses or evidentiary material (State of New York v. Horsemen's Benevolent and Protective Assoc., 34 AD2d 769, 311 NYS2d 511), since it is not the purpose of a bill of particulars to identify and describe the evidence by which a party proposes to prove her claim (Bassett v. Bando Sangsa Co., Ltd., 94 AD2d 358, 464 NYS2d 500, 501, appeal dismissed 60 NY2d 962, 471 NYS2d 84).

The Division's demand seeks amplification of various allegations made in the petition. The demand does not seek evidentiary material; it does not, on its face, appear overly broad or burdensome. It demands details only of those matters on which petitioner bears the burden of proof, and each demand relates directly to a statement made in the attachment to

petitioner's petition. Having failed to answer the Division's motion for a preclusion order, petitioner has failed to offer any rationale for denying the motion.

Petitioner is ordered to file a bill of particulars no later than May 16, 1994. Petitioner will be precluded at hearing from giving evidence of any items of which particulars have not been delivered by that date.

DATED: Troy, New York  
May 12, 1994

/s/ Daniel J. Ranalli

ASSISTANT CHIEF  
ADMINISTRATIVE LAW JUDGE